



DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY ON THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
WASHINGTON D.C. 20360-3100

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December 22, 1993

MEMORANDUM FOR THE CHIEF OF NAVAL OPERATIONS (N4) ~~4~~
COMMANDANT OF THE MARINE CORPS (LF)

Subj: DON ENVIRONMENTAL PROCEDURES APPLICABLE TO NON-BRAC REAL ESTATE ACTION

Ref: (a) DASN(E&S) Environmental Policy Memorandum 93-03 of 15 SEP 93: Procedures for Identification of Uncontaminated Property and Cleanup of Contaminated property at Closing Installations
b) DEPSECDEF Memorandum of 18 June 1993: Fast Track Cleanup at Closing Installations

Reference (a) provided guidance for implementation within the Navy and Marine Corps of the "Fast Track Cleanup" policies contained in reference (b). The policies and procedures contained therein apply only to installations being closed or realigned pursuant to the Base Closure and Realignment Act of 1968 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-150). However, the environmental concerns which led to the promulgation of references (a) and (b) are of equal concern in Non-BRAC real estate actions. The purpose of this memorandum is to provide environmental guidance to Navy and Marine Corps activities regarding Non-BRAC real estate actions.

The following guidance is established for Non-BRAC real estate actions:

- a. Environmental Baseline Survey (EBS). An EBS shall be prepared for all leases, easements and transfers of real property. Where appropriate, an EBS should be prepared for other actions involving the use of real property, e.g., licenses, depending on such factors as proposed use, the term of the use, and the presence of any contaminants on the property. In preparing an EBS for Non-BRAC real estate actions, the procedures established by enclosures (1) and (2) to reference (a) should be used as a guide. The scope of the EBS (investigation and documentation) must be appropriate to the type of real estate actions and property involved.
- b. Finding of Suitability for Transfer (FOST) or Lease (FOSL). A FOST and FOGL shall be prepared for each EBS. The FOST or FOGL shall be executed by the EFD Commander for Navy Activities and the cognizant Commanding General for Marine Corps Activities. This authority may be re delegated. The EBS and FOST/FOGL shall be permanently retained in the real estate contract file.

c. Regulator Involvement. In the preparation of an EBS and the FOST/FOSL for a Non-BRAC real estate action, Federal, State, and local regulators shall be consulted as necessary and appropriate, e.g., EPA where parcel involved is part of an NPL site.

d. Model Environmental Provisions. DOD has prepared model environmental provisions for leases and deeds at base closure locations (enclosures (1) and (2) to reference (b)). These provisions, modified as necessary, shall be included in leases, easements and transfers of real property at Non-BRAC locations.

Please ensure the distribution of this policy to all subordinate commands. Our point of contact is Ms. Michele Graco, (703) 602-2890.

F. S. STERNB
Acting

Copy to:
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Department of Navy Guidance for
Conducting Environmental Baseline and Close-Out Surveys
In Real Estate Transactions

I. PURPOSE

This policy guidance establishes the requirement for the Department of Navy (DON) to conduct an Environmental Baseline Survey (EBS) of the condition of real property to be acquired, transferred, leased, sold or otherwise conveyed, and conduct an Environmental Close-Out Survey (ECS) of property at the termination of any lease. The results of such a survey will:

- A. Document the nature, magnitude, and extent of any environmental contamination of property or interests in property considered for acquisition or transfer, lease, sale, or other disposition.
- B. Define potential environmental contamination liabilities associated with the subject real property transaction.
- C. Develop sufficient information to assess the environmental health risks, and ensure adequate protection of human health and the environment related to the subject real property transaction.
- D. Determine possible effects on property valuation from any contamination discovered.
- E. Provide the basis for notice when required under Section 120(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9620(h)(1), of type, quantity, and time frame of any storage, release or disposal of a hazardous substance on the property.

II. APPLICABILITY

A. This guidance shall apply to all DON controlled real property located within the United States, its territories, or possessions, and property or interests in property identified for acquisition or lease, sale or transfer from, to, or with a party other than the DON, except those specifically exempted in paragraph B of this section.

B. The requirement to do an environmental baseline survey shall not apply to the following transactions:

1. Renewal of a leasehold, if no change in leasehold premises or permitted use will occur, and current permitted use or uses under the leasehold do not result in environmentally significant consequences;

2. Acquisition of Explosive Quantity Distance easements.

III. TERMS

For purposes of this Guidance, the following definitions apply:

A. Acquisition: Obtain, use, or control real property or an interest in real property by purchase, condemnation, donation, exchange, leasing, revestment, and/or recapture.

B. DON proponent: The U. S. Marine Corps or U. S. Navy command or applicable Marine Corps or Navy installation, other component, or other agent designated to act on behalf of the DON, responsible for initiating or carrying out the proposed real property transaction.

C. Disposal: Any authorized method of divesting the DON of control of and responsibility for real property.

D. Hazardous substance: This term shall have the meaning provided in CERCLA, 42 U.S.C. § 9601(14), except that for the purpose of this guidance the term shall specifically include petroleum, petroleum products, oil, and lubricants (POL).

E. Real Property: Land; present possessory interest in land; surface water and ground water within boundaries of such land; structures, fixtures and other improvements on land; other interests or future interests in land.

F. Release: This term shall have the meaning provided in CERCLA, 42 U.S.C. § 9601(22).

G. Storage: The holding of hazardous substances for a temporary period prior to the hazardous substances being either used, treated, transported, or disposed of.

H. Transfer: Permits to other government agencies, donations, land exchanges, transfers of Federal Government property accountability, easements, leases, or licenses.

IV. PROCEDURE FOR CONDUCTING AN ENVIRONMENTAL BASELINE SURVEY (EBS)

Upon identification of a proposed real estate transaction for which an EBS is required, the installation is responsible to ensure that an EBS is completed. Naval Facilities Engineering Command, Engineering Field Division's/Activity's, are available to assist the installation in conducting the EBS. The DON proponent will provide appropriate funding for the EBS.

A. Phase I of the EBS will determine the potential for present and past site contamination, including the type and quantity, if any, of hazardous substances and time or times when storage, release into the environment or structures, or disposal of such hazardous substances took place on the property, to the

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extent such information is available for the subject real property transaction. At a minimum, this will include a comprehensive records search and site inspection. Therefore, the following actions must be taken:

(1) Review all existing or completed surveys or inspection reports regarding asbestos, PCBs, Underground Storage Tanks and piping systems, Solid Waste Management Units, Environmental Compliance Evaluation surveys.

(2) Review all Installation Restoration Program studies, or other documentation produced in accordance with procedures being carried out at the property under CERCLA or the Solid Waste Disposal Act.

(3) Review any applicable regulatory agency reports, notices of violation or noncompliance, or other similar records.

(4) Review current and/or discontinued permits pertaining to environmentally regulated activity.

(5) Review all title, deed, other real property records, or other available documents to ascertain prior uses of the real property which may have involved hazardous substances or otherwise contaminated the property.

(6) Conduct visual inspections to determine or confirm the presence of an environmentally hazardous condition (unusual odors, stained soils, stressed vegetation, leachate seeps, land features related to human activity, etc.) or wetlands.

B. At the conclusion of Phase I, a survey report will be prepared by the installation or if requested by the Engineering Field Division/Activity. The report will contain a statement of findings as to the environmental condition of the property. Survey reports shall always be made a part of the real estate transaction record. The format for this report is provided in Attachment 1.

C. For real property acquisition or transfer, lease, sale or other disposition initiated by non-DON parties, the DON proponent in the transaction will assure completion of an EBS and should participate actively when a non-DON party conducts an EBS. The DON will conduct the EBS if the non-DON party to the transaction is either unwilling or unable to conduct an EBS, and the DON proponent determines that the transaction would be in the best interest of the DON.

D. When the survey report indicates that no hazardous substance storage, release into the environment or structures, or disposal took place on the subject property, or that the occurrence of such storage, release, or disposal is not considered probable, no further action is necessary.

V. PROCEDURES FOR TRANSACTIONS INVOLVING PROPERTY IDENTIFIED AS POTENTIALLY CONTAMINATED

If the existence of contamination or potential for a release of hazardous substances into the environment or structures of the subject real property is indicated in the survey report, and the subject property (if DON-controlled) has not yet been further characterized pursuant to the Installation Restoration Program (IRP), Phase II of the EBS consisting of the following procedures must be followed before the proposed transaction may occur:

A. Conduct additional investigation as appropriate, to include surface, subsurface, and aquifer sampling consistent with the requirements of the Navy/Marine Corps IR Manual to (1) identify contaminants, or sources of release of contaminants, in the structures or soil; (2) ascertain or confirm the presence of groundwater contamination, and (3) determine the type, concentration and extent of the contamination.

B. Prepare an addendum to the Phase I survey report that contains the results of the Phase II investigation, and a determination whether any contamination identified is above minimum concentration levels or other relevant and appropriate standards.

C. Identify the subject property as contaminated to the appropriate command channels for determination as to whether the property must be included under the IRP, or is subject to an existing Federal or State regulatory agreement for the property itself or the installation.

Based upon the results of such additional investigation, the DON proponent may go forward with the transaction, or elect to exclude contaminated portions of the subject property from the acquisition or transfer, lease, sale, or other disposition. Any deed transaction involving DON-controlled property on which any hazardous substance was stored for one year or more, known to have been released or disposed of, is subject to the requirements of Section 120(h)(3) of CERCLA.

VI. SPECIAL PROVISIONS FOR OUT-LEASING

A. If the property required to undergo an EBS has been identified as contaminated, but the appropriate remedial action has not yet been taken, such property may be considered for out-leasing provided the following additional actions are taken:

(1) The results of all sampling, investigations and all other available data, including any site or remedial investigations (SI or RI), must be analyzed to determine what, if any, health, occupational, or safety risks are associated with the contemplated use of the property due to the presence of the contamination; and,

- (2) Analyze measures that can or should be adopted or restrictive provisions that should be included in the lease to
 - (a) mitigate the effects of the contamination by reducing any environmental, health, occupational or safety risks associated with the use of the property to legally acceptable levels, and
 - (b) prevent interference with ongoing IRP activities.

B. Upon termination of any out-lease granted pursuant to section VI.A, the DON proponent and the lessee (and its sub-lessees, if applicable) will jointly conduct an Environmental Close-out Survey (ECS) to ascertain any changes in the environmental condition of the subject property from that documented in the EBS. If the lessee does not participate for any reason, the DON proponent will still conduct the ECS and provide a copy of the findings to the lessee. The procedure for the ECS shall be the same as that for an EBS, with the following additions, as appropriate:

- (1) Review Federal or State audits or inspections conducted during the term of the lease.
- (2) Review any and all documentation submitted by lessee (or sublessees) to Federal, State and local environmental regulatory agencies.
- (3) Document all hazardous substances used or stored at the property during the term of the lease.
- (4) Document all hazardous waste generated on the property during the term of the lease, and its disposition.

The DON proponent will then prepare an Environmental Condition Report (ECR) for the property, to be signed by the authorized agent of the lessee (or sublessee) and the DON proponent or their delegate. If the ECR indicates that contamination of the property may have occurred in connection with the lessee's (or sublessee's) tenancy, the procedures of Section V of this policy guidance must then be completed. Any follow-on action shall be governed by the requirements of the lease and applicable Federal and State law.

VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

DON proponents will continue to comply with all provisions of other Federal, State, Department of Defense, DON, or local laws and regulations applicable to the subject transaction.

VIII. EFFECTIVE DATE

This guidance becomes effective on the date signed and remains in effect until superseded by further guidance or applicable Federal, State, or local law or regulation.

ELSIE L. MUNSEL

Deputy Assistant Secretary of the Navy
for Environment and Safety

DATE

ATTACHMENT 1

FORMAT FOR THE ENVIRONMENTAL BASELINE SURVEY REPORT

I. INTRODUCTION

A. Purpose of Survey

II. EXECUTIVE SUMMARY

A. Brief statement of the areas of real property (parcels) evaluated.

B. Conclusions of the EBS

III. PARCEL IDENTIFICATION

A. Boundaries of Parcel and Scope of Survey (include map)

IV. SURVEY METHODOLOGY

A. List and Description of Documents Reviewed

B. Inspections of Property Conducted

V. FINDINGS

A. Description of the Site History and Current Use

B. Description of the Site Environmental Setting

1. Location of nearby releases or contamination
2. Location of sewer lines, runoff patterns

C. Media Addressed

1. Hazardous materials use and storage areas
2. Solid and hazardous waste disposal
3. PCB-containing electrical equipment
4. Above ground/underground tanks and pipelines
5. Soil contamination
6. Groundwater
7. Asbestos-containing buildings
8. Surface water and wetlands
9. Wastewater treatment and discharge
10. Other issues (e.g., radon, lead-based paints, etc.)

D. Applicable Regulatory Compliance Issues

1. List of compliance issues
2. Description of corrective actions
3. Estimates for various alternatives

E. Conclusions

F. Recommendations

IV. ATTACHMENTS

A. Site photographs